THE HON'BLE SRI JUSTICE P.S. NARAYANA

W.P.Nos.16344 & 17404 of 2006

Date : 2-11-2006

Between:

Sri Palamanda Prabhakar s/o.
P.Pondappa .. Petitioner

And

The State Election Commission
represented by the Election Commissioner,
Hyderabad and others .. Respondents

THE HON'BLE SRI JUSTICE P.S. NARAYANA

W.P.Nos.16344 & 17404 of 2006

**COMMON ORDER:**

**1.** Sri Palamanda Prabhakar and others filed W.P.No.16344/2006 praying for a writ, order or direction more particularly one in the nature of writ of certiorari calling for records issued in proceedings No.1792/SEC/B2/2006, dated 29-7-2006 by 1st respondent and to quash the same and to pass such other suitable orders. Respondents 7 to 12 were impleaded as per the order made by this Court dated 25-9-2006 in W.P.M.P.No.24747/2006. The 1st respondent filed counter affidavit. Likewise, counter affidavit was filed on behalf of respondents 4 to 6. A reply affidavit also was filed.

**2.** W.P.No.17404/2006 is filed by A.Ambika praying for a writ of mandamus calling for records issued in proceedings No.1792/SEC-B.2/2006 dated 3-8-2006 by the 1st respondent and to set aside the same as without jurisdiction and against to the principles of natural justice and to pass such other suitable orders. The 1st respondent filed counter affidavit just on similar lines taking virtually the same stand which had been taken in the former Writ Petition.

**3.** In view of the fact that the factual matrix involved in both the Writ Petitions and the questions of law being common, these Writ Petitions are being disposed of by this Common Order.

**4.** **Submissions of Sri Vedula Venkata Ramana:** Sri Vedula Venkata Ramana, the learned Counsel representing the petitioners in W.P.No.16344/2006 had taken this Court through the averments made in the affidavit filed in support of the Writ Petition and also the contents of the order impugned in this Writ Petition and would submit that in the light of Article 243-K of the Constitution of India such power cannot be exercised by the State Election Commission at this stage and hence the impugned order is totally without jurisdiction. The learned Counsel also had referred to Article 243(O)(b) of the Constitution of India and Sections 201 and 233 of A.P. Panchayat Raj Act, 1994 (hereinafter in short referred to as “Act” for the purpose of convenience). While elaborating his Sections, the Counsel also had referred to the old Rule 12 and the corresponding Rule, the present Rule 16,

and further had drawn the attention of this Court to Rule 62. The Counsel would submit that inasmuch as the election process was complete by declaration of results, the issuance of certificate being only a ministerial job, by that it cannot be said that the election process is not completed. The Counsel would submit that in the facts and circumstances the State Election Commission is not empowered to initiate such action as specified in the impugned proceeding. The Counsel also placed reliance on certain decisions in this regard.

**5.** **Submissions of Sri P.V. Vidya Sagar :** Sri P.V. Vidya Sagar, the learned Counsel representing the petitioners in W.P.No.17404/2006, substantially while adopting the arguments advanced by Sri Vedula Venkata Ramana, had further explained what is the meaning of 'election' and when it can be said that the election process commences and when the same comes to an end. The learned Counsel would submit that when once the results are declared the State Election Commission would become *functus officio.* The Counsel also placed strong reliance on **Mohinder Singh Gill and another Vs. The Chief Election Commissioner, New Delhi and others** [1] **Ram Phal Kunda Vs. Kamal Sharma** [2] and **G.Sunitha Vs. Election Commissioner of Andhra Pradesh, Hyderabad and others**[3]**.** The learned Counsel also would maintain that if the stand taken by the concerned District Collector and the stand taken by the State Election Commission to be accepted, then, it will amount to these authorities collecting some evidence by way of expert opinion and it would also amount to reopening of the issue already decided. The learned Counsel also had explained the peculiar facts involved in the matter and would submit that at any stretch of imagination, on the strength of such insufficient material, preventing democratically elected Sarpanch from functioning as Sarpanch, would be totally unjustified.

**6.** **Submissions of Sri V.V. Prabhakar Rao :** Sri V.V.Prabhakar Rao, the learned Counsel representing the State Election Commission had taken this Court through Article 243-K of the Constitution of India and Section 201 of the Act. The learned Counsel also would contend that the State Election Commission in fact had not taken any final decision and in fact as can be seen from the impugned order, the election as such was not declared void but only it was suspended and

hence in stead of waiting for a final decision, approaching this Court at this stage would be definitely premature. The learned Counsel also had drawn the attention of this Court to Rule 62 and Rule 63 and would contend that inasmuch as no election certificate as such is given, the election process is not complete. In the case of large scale forgery like the one which had been complained of in the present case, though the same is not provided by either under the Act or the Rules, by virtue of exercise of plenary powers, the State Election Commission is entitled to take appropriate decision and hence in the light of the reasons which are self-explanatory in the impugned proceeding, the same cannot be found fault. The learned Counsel also would submit that in the light of the plenary powers which had been specified in the decision **A.C.Jose Vs. Sivan Pillai and others** [4] this action impugned in these Writ Petitions, is within the power and purview of the State Election Commission as such and hence the Writ Petitions are liable to be dismissed. The learned Counsel also placed reliance on certain decisions.

**7.** **Submissions of Sri Ravinder :** Sri Ravinder, the learned Counsel representing the unofficial respondents in W.P.No.16344/2006 would maintain that it is a case of fraud and fraud would vitiate everything. The Counsel also had drawn the attention of this Court to the date of withdrawal and the immediate action which had been initiated in relation thereto. The learned Counsel also pointed out to Rule 64 of the Rules and had drawn the attention of this Court to **Election Commission of India Vs. Union of India** [5]**.**

**8.** Heard the Counsel and perused the respective pleadings of the parties and also the impugned proceedings.

**9.** The writ petitioners in W.P.No.16344/2006 had averred that the 1st respondent had issued election notification on 9-7-2006 notifying the election schedule to various Gram Panchayats in the State of Andhra Pradesh. In conformity with the said notification, the 2nd respondent, who is the election officer, issued notification on 14-7-2006 in Chittoor District. As per the said notification the date of filing nomination was from 15-7-2006 to 19-7-2006, the dates of scrutiny of the said nominations were 20-7-2006 to 21-7-2006, the date of withdrawal of nominations was on 23-7-2006, the date for withdrawal of

nominations was 23-7-2006 and the date of election was on 6-8-2006. Pursuant to the said notification, myself and the petitioners 2 to 9 along with others including respondents 3 to 6 filed nominations before the respective returning officers of the Gram Panchayats. Thereafter scrutiny of nominations took place and a list in Form 5(1) was published. On 23-7-2006 i.e., the date of withdrawal of nominations, the respondents 3 to 6 and others, who had filed nominations in the above mentioned respective Gram Panchayats withdrew their nominations. As there were no other contesting candidates and as there was only one valid nomination in our respective Gram Panchayats, the returning officers on 23-7-2006 declared the petitioners as elected for the offices of Sarpanch and also issued Form X to that effect. It is also stated that while so, the respondents 3 to 6 who also filed their nominations for the offices of Sarpanch in Cherukuvaripalle village, Reddivaripalle village, Bandarlapalle village and Vootuvaripalle village respectively and who later withdrew their nominations appeared to have back tracked and lodged a complaint on 24-7-2006 with the 2nd respondent alleging that they did not withdraw their nominations on 23-7-2006 and that the said withdrawal forms were forged. These respondents had also gone to the press and gave statement =s to the above effect and their one sided version was published without even verifying the veracity or otherwise of the said statements. Apart from the respondents 3 to 6, two other persons from Khambamvaripalle appeared to have joined them to lodge the complaint. In fact, in Khambamvaripalle Gram Panchayat, there is unanimous declaration and the elections had been held as per the schedule. The 2nd respondent, purporting to act on the said complaint and the press statements appeared to have made enquiry behind the back of the writ petitioners and prima facie opined that the signatures in the nominations forms, the declaration forms and the sample signatures obtained do not match with that of the signatures contained in the withdrawal forms of respondents 3 to 6 and others. It is curious to note that the complaints were made by the candidates from four villages but the 2nd respondent evidently basing on a press report arrived at his prima facie opinion that in respect of ten Gram Panchayats the withdrawal forms were allegedly forged and accordingly communicated his opinion to the 1st respondent. The 1st respondent relying on the so called opinion of the 2nd

respondent and purporting to exercise his powers under Article 243(K) of the Constitution of India and Section 201 of the Act suspended the declarations of the writ petitioners as elected Sarpanchas and directed the 2nd respondent not to allow the writ petitioners to assume office. In the said proceedings, the 1st respondent also directed for sending the withdrawal forms to the forensic experts for obtaining the report on the genuineness of the signatures on the withdrawal forms. As the issuance of the said proceedings No.1792/SEC-b2/2006 dated 29-7-2006, is ipso facto illegal, without jurisdiction and violative of the principles of natural justice, the present Writ Petition had been filed. It is further stated that in para-5 of the affidavit filed in support of the Writ Petition that Article 243(K) of the Constitution of India and the Section 201 of the Act empower the 2nd respondent to supervise, direct and control the process of elections to Panchayats. It is further stated that A.P. Panchayat Raj (Conduct of Elections) Rules 1994 (hereinafter in short referred to as "Rules") provide for the manner in which the elections are to be held for the local bodies. In fact, in exercise of the powers conferred under Article 243K of the Constitution of India and under Sections 200 and 201 of the Act, the Election Commission had framed code of conduct for Political Parties and contesting candidates. The said case does not govern a situation after the declaration of the result. No other rules are made to deal with the post declaration situation, obviously conscious of the fact that the jurisdiction of the Election Commission ceases after declaration of the election. As held by the Hon'ble Supreme Court in a catena of Judgments, the term "election" includes all steps and entire proceedings commencing from the date of notification of elections till the date of declaration of result. Thus the role of the Election Commission concludes with the declaration of the result. If there arise any grievances relating to declaration of result or the manner in which elections were conducted, the appropriate forum for redressal of such grievances is the Election Tribunal by way of election petition as provided in Section 233 of the Act r/w. A.P. Panchayat Raj (Election Tribunals in respect of Gram Panchayat, Mandal Parishads and Zilla Parishads) Rules, 1995. Thus the powers of the Election Commission or its officers ceases the moment the candidate is declared to be elected and the only remedy available in law for any person aggrieved by such declaration is filing of

the election petition before the jurisdictional Election Tribunal. It is also further stated that after the declaration of the result of the writ petitioners for the posts of Sarpanches, the 2nd respondent's action in conducting enquiry on the authenticity of the signatures on the withdrawal forms and forming an opinion that the said signatures are allegedly forged and the 1st respondent further relying on the said opinion of the 2nd respondent and issuing the impugned proceedings without putting the petitioners on notice is manifestly illegal and against the principles of natural justice. The impugned proceedings are ultra vires the Constitution and the provisions of the Act and as such the same is liable to be quashed. Neither the 1st and 2nd respondents are competent nor empowered to decide the so called grievance sought to be ventilated by the respondents 3 to 6. In fact, as per Rule 10 of the Rules, any candidate intending to withdraw his candidature shall sign in Form 6 and shall personally deliver it to the election officer. As evident from the impugned proceedings, except for the candidates who filed their nominations for the villages Thimmanayunipalle and Sodam, all other candidates had appeared in person before the returning officer for withdrawing their nominations. Even the said two candidates had appeared through their proposer and authorised agent respectively and the said two candidates admittedly did not lodge any complaint with the 2nd respondent. The hastiness of the respondents 1 and 2 is further evident from the fact that though the petitioners 7 and 8 are declared to be elected the impugned proceedings mentions wrong names. Moreover the impugned proceedings were not even served upon the petitioners and on coming to know the same through press the petitioners made an application dated 1-8-2006 under Right to Information Act 2005 and thereafter the petitioners were issued a copy of the impugned proceedings. Thus viewed from any angle, the action of the respondents 1 and 2 is highly arbitrary, illegal and colourable exercise of power. It is also further submitted that respondents 3 to 6 in fact do not enjoy any reputation or popularity in their respective villages and who are very well aware that they cannot win the elections are resorting to these types of dilatory tactics to prevent the writ petitioners from assuming the office of Sarpanch.

**10.** In the counter affidavit filed by the 1st respondent it was averred in

para-4 that the 2nd respondent District Collector, Chittoor sent a report Roc.H2/7272/2006, dated 26-7-2006 in which it is stated that respondents 3 to 6 and Sri B.Reddy Prasad Reddy and Sri K.Hanumanthu had complained that their signatures were forged on the withdrawal forms. The report discloses that on the basis of alleged forged withdrawal forms, ten candidates specified in column No.2 of the table below are declared to have been unanimously elected as Sarpanchas of the Gram Panchayats specified in column No.3 thereof by the Returning Officer State-I of the concerned Gram Panchayat shown in column No.4 thereof.

| Sl. No. | Name of the candidate | Name of the Gram Panchayat | Name of the Returning Officer |
|---|---|---|---|
| (1) | (2) | (3) | (4) |
| 1. | Sri Palamanda Prabhakar | Booragamanda | Sri L.Uma Shankar, Assistant Engineer, Panchayat Raj, Sodam, State-I |
| 2 | Smt.Sagabala Yelamma | Nadigadda | -do- |
| 3 | Sri Thakkella Bhaskar | Jogivaripalle | -do- |
| 4 | Smt.Jadagala Nirmala | Gongivaripalle | Sri Ramanjaneyulu Agricultural Officer, Sodam |
| 5 | Sri Kodakanti Munivenkataramanachari | Ammagaripalle | -do- |
| 6 | Smt.Cheruku Lalithamma | Thimmanayunipalle | -do- |
| 7 | Sri Challa Ramakrishna Reddy | Vootupalle | -do- |
| 8 | Sri Velupu Naresh | Reddyvaripalle | -do- |
| 9 | Sri Tummala Nagabhushanam Reddy | Sodam | Sri A.Veera Nagi Reddy, Lecturer in Civics, Government Junior College, Sodam |
| 10 | Sri Penubaka Ravi Kumar | Chintalavaripalle | Sri D.Narayana Reddy, Mandal Education Officer, Sodam |

The 2nd respondent further stated that he obtained the specimen signatures of all the candidates in respect of the said 10 Gram Panchayats whose withdrawal forms are allegedly forged. Thereafter he compared the specimen signatures of the said candidates with the signatures appearing in their nomination forms and

the declaration and they tallied. But the signature on the withdrawal forms did not tally with the specimen signatures, signature on the nomination form and the declaration and this is a prima facie proof that their signatures on the withdrawal forms had been forged. The 1st respondent examined the case with reference to Rule 14 of A.P.P.R. (Conduct of Election) Rules, 1994 relating to withdrawal of candidature and its ingredients are :

1. The candidate has to give notice in Form-VII in person to the Returning Officer; and
2. Where such notice is delivered by such candidate in person or it shall be delivered by his proposer of the Election Agent who has been authorised in this behalf in writing by such candidate.

In view of the provisions of Rule 14, the 1st respondent issued letter No.1792/SEC-B2/2006 dated 27-7-2006 and requested the 2nd respondent to clarify:

1. Whether the notice of the withdrawal is given in Form-VII;
2. Whether it is delivered by the candidate himself;
3. In the alternative whether it is delivered by his proposer or Election Agent;
4. Whether it is delivered by his proposer or Election Agent who has been authorised in this behalf in writing by the same candidate.

The 2nd respondent in his letter Roc.No.H2/7272/2006 dated 27-7-2006 stated that the concerned Returning Officer Stage-I stated that in respect of 10 Gram Panchayats specified in the table, except items 6 and 9, the withdrawal forms were delivered personally, that in respect of item 6, it was delivered by the proposer who is not authorised for the purpose and that in respect of item 9, it was delivered by a duly authorised election agent. It is further stated in para-6 of the counter affidavit of the 1st respondent that the 1st respondent took all the records into consideration and when examined thoroughly, two significant facts were noted, namely that (1) the ten contesting candidates who are alleging that their withdrawal forms had been forged categorically stated that they have not delivered them personally and (2) the documentary evidence revealed that while their specimen signature is tallying with their signature on the nomination form and the declaration, the signature on the withdrawal form is not tallying with the specimen signature or the signature on the nomination form and the declaration. Therefore

both on the basis of oral and documentary evidence available the nonchalant statements of the Returning Officers State-I, that the candidates in respect of the Gram Panchayats specified in the table except items 6 and 9 personally withdrew their candidature appeared prima facie unbelievable. In these circumstances, the 1st respondent issued order No.1792/SEC-B2/2006, dated 29-7-2006, the effect of which is only to suspend telection of the Sarpanchas indicated in column No.2 of the above table who are unanimously declared to have been elected and to prevent them from taking oath of office. The Collector, Chittoor is requested to get the signatures of the candidates who are alleged to have withdrawn their candidature by forensic experts in the meantime. The orders issued by the 1st respondent are only interim in nature in order to investigate whether any fraud took place in the withdrawal of the candidatures. The assertion of the aggrieved candidates that their signatures were formed, the fact that their signatures on the withdrawal form are not tallying with their specimen signature and signatures on the nomination form and declaration, the fact that withdrawal took place on such a large scale gave scope for the 1st respondent that some large scale fraud took place in the whole episode and in order to see that the purity of elections is maintained, interference was called for and therefore orders were issued suspending the unanimous election of the ten Sarpanchas in question and to refer the signatures on the withdrawal form and other records to the forensic experts for a report and the report is awaited. It is further stated in para-7 that in pursuance of orders dated 27-7-2006, the 2nd respondent addressed letter Roc.No.H2/7272/2006 dated 2-8-2006 to the Director, A.P. Forensic Science Laboratories, Red Hills, Hyderabad requesting him to examine the record and to communicate the opinion on the signature on the contesting candidates on withdrawal forms comparing with the standard/expected signatures of such a candidate and he sent all the records to the Director, Forensic Science Laboratories and his report is awaited. Specific stand is taken that the 1st respondent had not taken any final action and the sole intention is to investigate any large scale fraud had taken place forging the withdrawal forms of the aggrieved candidates and to obtain the expert opinion in the matter in order to find out the truth or otherwise of the allegations of forgery and all this is quite legitimate

in the interest of maintaining purity in elections. Further specific stand is taken in para-9 of the counter affidavit that in respect of election disputes, the State Election Commission has no role to play. But large scale fraud in withdrawal of candidatures affecting the purity of elections and an election dispute have to be distinguished. Where large scale forgery of withdrawal form is brought to the notice of the State Election Commission by a responsible authority like the District Collector who is also the District Election Authority with supporting evidence, the State Election Commission cannot routinely reply that it is an election dispute and that and that it cannot interfere in the matter. The vast powers of superintendence, direction and control of the elections vested in the State Election Commission under Article 243(K) of the Constitution of India does not allow him to supinely look on when large scale fraud takes place. Therefore, maintenance of purity of elections by interfering in cases of large scale fraud supported by documentary evidence is distinct from an ordinary election dispute and interference in such cases of large scale fraud is within the plenary powers of the State Election Commission. Further specific stand is taken at para-10 that if a single candidate alleges some irregularity in the election process that is an entirely different matter but where a large number of Sarpanchas in a Mandal come forward alleging large scale forgery and the District Election Authority after due verification finds that there is prima facie evidence for such allegations, the magnitude of the matter is of significance warranting interference of the State Election Commission under its plenary powers. If in such large scale cases of prima facie fraudulent withdrawal also the cases are relegated to the Election Tribunal in which the proceedings take years on end and thereafter appeals can be filed, it allows in the meantime the pretenders of the office of Sarpanch who gained that office by fraudulent means to continue themselves, defeating the very purpose of the elections. What the State Election Commission did is to fine out through the medium of handwriting experts whether the signatures are forged or not and to disallow the pretenders to assume the office and function and hence there is nothing illegal or unconstitutional in the interference by the State Election Commission. The allegations to the contra are denied as considerable examination of the matter had been done. Thus specific stand is taken that in the light of the facts and

circumstances, the Writ Petition itself is premature.

**11.** In the counter affidavit filed by respondents 4 to 6, the Election Schedule had been narrated in para-3 of the counter affidavit. It is further stated that the decision taken by the 1st respondent is well within the jurisdiction under Article 243(K) of the Constitution of India and as per the provisions of the Act. It is also stated that they had not withdrawn their candidatures for the posts of Sarpanchas in the respective Village Panchayats and hence they made representations to the 2nd respondent stating their signatures were forged on the withdrawal forms and on the basis of the representations made to the 2nd respondent the 1st respondent after obtaining report from the 2nd respondent had taken a decision on 29-7-2006 by suspending the entire election process including restraining the petitioners from assuming office of Sarpanchas from the respective panchayats. Further a specific stand is taken that by virtue of powers under Article 243(K) of the Constitution, the 1st respondent is having such powers. Further a specific stand is taken that the 1st respondent had not yet taken any final decision. The truth or otherwise relating to forgery is a pure question of fact and hence this cannot be gone into in a Writ Petition under Article 226 of the Constitution of India.

**12.** A reply affidavit is filed again reiterating the self same stand and explaining certain additional facts. Specific stand is taken that whether there was any fraud is committed or not is to be decided by Election Tribunal, the same being a disputed question of fact and the same may have to be elicited in the trial by examining the witnesses. The 1st respondent by making a roving enquiry cannot adjudicate on the said disputed questions of fact. Certain other details also had been narrated in the reply affidavit.

**13.** In W.P.No.17404/2006, at the outset, it may be stated that the 1st respondent-State Election Commission had taken the same stand substantially as taken in the prior Writ Petition referred to supra. It is stated in the affidavit filed in support of the Writ Petition by the writ petitioner that she is a voter of Keelagaram village, Narayanavaram Mandal, Chittoor District and the office of Sarpanch is reserved for Backward Case (General). The 1st respondent had issued election

notification on 9-7-2006 notifying the election schedule to various Gram Panchayats in the State of Andhra Pradesh. In conformity with the said notification, the 2nd respondent who is the Election Authority issued a notification on 14-7-2006 in Chittoor District. As per the said notification the date of filing nominations was from 15-7-2006 to 19-7-2006, the dates of scrutiny of the said nominations were 20-7-2006 and 21-7-2006, the date of withdrawal of nominations was 23-7-2006 and the date of election was 2-8-2006. Pursuant to the said notification the petitioner and three others had filed nominations personally and the husband of the 4th respondent had filed her nomination. It further stated that an objection was raised on 20-7-2006 before the Returning Officer at 2.30 p.m. and the same was acknowledged stating that the nomination filed by the 4th respondent was not signed by her and it was signed by her husband. In spite of the same due to political pressures no action was taken. Thereafter scrutiny of nominations took place and a list in Form 5(1) was published. It is submitted that on 23-7-2006 the candidates i.e., Ramanamma, Chandran and Yahya Khan were resent and had withdrawn their nominations but on behalf of 4th respondent her husband Dharmalingam and proposer were present and had withdrawn the nomination on his own otherwise any coercion. But subsequently after two days a complaint was given to the 2nd respondent alleging that this nomination was withdrawn by forging the signature. It is stated that it is a false complaint and no credence was given. Therefore out of five nominations four nominations were withdrawn. As there were no other candidates and as there was only one candidate, the Returning Officer declared that the petitioner is elected for the office of Sarpanch of Keelagaram village and Form-29 was issued on 2-8-2006 declaring the petitioner as Sarpanch and she had taken oath on the same day. Thereafter a notice was issued in Form-I for the election of Vice President requesting all the Ward Members to be present on 3-8-2006 at 10 A.M. Accordingly the Ward Members had attended the meeting and one V.S.Devarajan was elected as Vice President and therefore the entire election process was completed. It is further stated that the 4th respondent's theory of forgery is only concocted one and it is belated. The signature on the declaration form and withdrawal form are one and the same and the signature of the candidate

will not be tallied since she had not signed in the declaration form. It is further stated that once the Sarpanch is declared by the Returning Officer as per the Rules, either the 1st respondent or the 2nd respondent have no power to suspend or to set aside the election. The forum that is available is Election Tribunal to the aggrieved party and therefore the impugned order passed by the 1st respondent is without jurisdiction and further the petitioner was not afforded any opportunity before passing the impugned order. It is further stated that the 1st respondent relying on the so-called opinion of the 2nd respondent and purporting to exercise his powers under Article 243(K) of the Constitution of India and Section 201 of the Act suspended from functioning as Sarpanch and also directed the 2nd respondent not to allow the petitioners to assume office. In the said proceedings the 1st respondent also directed for sending the withdrawal forms to the forensic experts for obtaining the report on the genuineness of the signatures on the withdrawal forms to the forensic experts. As the issuance of the said proceedings No.1792/SEC-B2/2006-2 dated 3-8-2006 is ipso facto illegal, without jurisdiction and violative of the principles of natural justice the present Writ Petition was filed. It is also stated that Article 243(K) of the Constitution of India and Section 21 of the Act empower the 2nd respondent to supervise, direct and control the process of elections to the A.P. Panchayat Raj (Conduct of Election) Rules 1994 provide for the manner in which the elections are to be held for the local bodies. In fact, in exercise of the powers conferred under Article 243(K) of the Constitution of India and Sections 200 and 201 of the Act, the Election Commission had framed Code of Conduct for Political Parties and the contesting candidates. The said case does not govern a situation after the declaration of the result. No other rules are made to deal with the post declaration situation, obviously conscious of the fact that the jurisdiction of the Election Commission ceases after the declaration of election. As held by the Hon'ble Supreme Court in a catena of Judgments, the term 'election' includes all steps and entire proceedings commencing from the date of notification of elections till the date of declaration of result. Thus the role of the Election Commission concludes with the declaration of result. If there arise any grievance relating to declaration of result or the manner in which the elections

were conducted, the appropriate forum for redressal of such grievances is the Election Tribunal by way of Election Petition as provided in Section 233 of the Act r/w. A.P. Panchayat Raj (Election Tribunals in respect of Gram Panchayats, Mandal Parishads and Zilla Parishads) Rules, 1995. Thus the powers of Election Commission or its officers ceases the moment the candidate is declared to be elected and the only remedy available in law for any person aggrieved by such declaration is filing of the Electio Petition before the Jurisdictional Election Tribunal. It is also further stated that in the present case after declaration of the result for the post of Sarpanch, the 2nd respondent's action in conducting an enquiry on the authenticity of the signatures on the withdrawal form and forming an opinion that the said signatures are allegedly forged and the 1st respondent further relying on the said opinion of the 2nd respondent and issuing the impugned proceedings without putting any notice to the petitioner is prima facie illegal and against the principles of natural justice. The impugned proceedings are ultra vires the Constitution and the provisions of the Act and as such the same is liable to be quashed. Neither the 1st and the 2nd respondents are competent nor empowered to decide the so-called grievance sought to be ventilated by the 4th respondent. In fact, as per Rule 10 of the Rules, any candidate intending to withdraw his candidature shall sign in Form-6 and shall personally deliver it to the Election Officer. It is the mischief that was done by the 4th respondent's husband who signed and filed the nomination and withdrawn the same. If the petitioner is not continued in the office she will be put to irreparable loss and hardship and she cannot be deprived of the assuming of the office for no mistake committed by her.

**14.** The impugned order in W.P.No.16344/2006, dated 29-7-2006 reads as hereunder:

ORDER

Sub: Elections – Chittoor District – Sodam Mandal – Elections to Panchayat Raj Institutions, 2006 – Allegations of forgery of signatures in withdrawal forms – Complaints given by candidates contesting for Sarpanch post in Sodam Mandal – Records verified – Regarding.

Ref:- 1.Report of the Sub-Collector, Madanapalle Roc.Ex.A.2/1352/2006, dt.25-7-2006

2.Letter No.H2/7272/2006, dt.26-7-2006 of the District Collector, Chittoor.

3.Letter No.1792/SEC-B2/2006, dt.27-7-2006 of the State Election Commission

4.Letter No.H2/7272/2006, dt.27-7-2006 of the District Collector, Chittoor.

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WHEREAS in his letter 2nd cited, the Collector, Chittoor District reported that on 24-7-2006 a fax complaint has been received from the following six persons who are candidates to the offices of the Sarpanch in various Gram Panchayats of Sodam Mandal in Chittoor District alleging that their signatures were forged in the withdrawal forms;

1. Sri R.Sudha, Cherukuvaripalle village, Sodam Mandal
2. Smt.G.Sankaramma Reddivaripalle village, Sodam Mandal
3. Sri C.Rajanna, Bandarlapalle village, Ammagaripalle (P), Sodam Mandal
4. Sri B.Reddi Prasad Reddy, Khambamvaripalle village, Sodam Mandal
5. Sri K.Ramakrishna Reddy, Vootuvaripalle village, Sodam Mandal
6. Sri K.Hanumanthu, Khambamvaripalle village, Sodam Mandal.

AND WHEREAS on the basis of the above complaint and the newspaper reports he directed the Sub-Collector, Madanapalli to verify all the connected records and also to send the records to the District Collector;

AND WHEREAS on receipt of the records he made a detailed examination of the signatures of the nomination forms, declarations and withdrawal forms and the specimen signatures obtained from the candidates;

AND WHEREAS, the Collector after such detailed examination reported to the State Election Commission that the signatures of the contesting candidates-cum-complaints match the signatures in the nomination forms, the declaration and the sample signatures obtained but they do not prima facie match with the signature in the withdrawal form;

AND WHEREAS, the Collector also reported that on the basis of such withdrawal forms the ten candidates specified in column (2) of the Table below (hereinafter in his Notification referred to as 'the Table' are declared to have been unanimously elected as Sarpanch of the Gram Panchayat specified in column (3) thereof by the Returning Officer, Stage-I of the Gram Panchayat shown in column (4) thereof;

| Sl. No. | Name of the Candidate | Name of the Gram Panchayat | Name of the Returning Officer |
|---|---|---|---|
| (1) | (2) | (3) | (4) |

| | | | |
|---|---|---|---|
| 1 | Sri Palamanda Prabhakar | Booragamanda | Sri L.Uma Shankar, Assistant Engineer, Panchayat Raj, Sodam, Stage-I |
| 2 | Smt.Sagabala Yelamma | Nadigadda | -do- |
| 3 | Sri Thakkella Bhaskar | Jogivaripalle | -do- |
| 4 | Smt.Jagadala Nirmala | Congivaripalle | Sri Ramanjaneyulu, Agricultural Officer, Sodam |
| 5 | Sri Kodakanti Munivenkataramanachari | Ammagaripalle | -do- |
| 6 | Smt.Cheruku Lalithamma | Thimmanayunipalle | -do- |
| 7 | Sri Challa Ramakrishna Reddy | Vootupalle | -do- |
| 8 | Sri Velupu Naresh | Reddivaripalle | -do- |
| 9 | Sri Tummala Nagabhushanam Reddy | Sodam | Sri A.Veera Nagi Reddy, Lecturer in Civics, Government Junior College, Sodam |
| 10 | Sri Penubaka Ravi Kumar | Chintalavaripalle | Sri D.Narayana Reddy, Mandal Education Officer, Sodam |

AND WHEREAS, the Collector has also reported that in the case of the ten Sarpanchas specified in the Table, a declaration of unanimous election has been made in Form-X of the A.P.P.R. (Conduct of Election) Rules 2006 by the Returning Officer, Stage-I of the Gram Panchayat concerned;

AND WHEREAS, in a further enquiry conducted by the Collector, chittoor in pursuance of the reference third cited, the concerned Returning Officer, Stage-I stated that in respect of all the ten Gram Panchayats specified in the Table, except items (6) and (9), the withdrawal forms were delivered personally, that in respect of item (6) it was delivered by the proposer who is not authorised for the purpose and that in respect of item (9), it was delivered by a duly authorised election agent;

AND WHEREAS, in the face of overwhelming documentary evidence, prima facie the statements of the Returning Officers, Stage-I do not seem to be evadable;

AND WHEREAS, no overwhelming documentary evidence available leads to a strong suspicion of foul play warranting the interference of the

State Election Commission in the interests of maintaining purity of elections;

AND WHEREAS, the conduct of the three Returning Officers, Stage-I specified in the Table is prima facie suspicious, viewed in the face of documentary evidence, and that in their hands the fairness of the election process in the ten Gram Panchayats specified in the Table cannot be relied upon;

AND WHEREAS, the State Election Commission is of the view that if the signatures of the candidates on the withdrawal forms are really forged, as alleged and as can be inferred prima facie from the report of the Collector, the election process can be said to have been vitiated and consequently rendered the declaration of the ten candidates referred to in the Table as have been elected unanimously as Sarpanchas void;

AND WHEREAS, the State Election Commission is of the opinion that in order to avoid such large scale fraud in the election process which strikes at the very root of purity of elections it is necessary to get the genuineness of the signatures of the candidates in question in the withdrawal forms verified by the forensic experts (handwriting experts) authorised by the Government before the Sarpanchas declared to have been unanimously elected are allowed to take charge and also to allow the further process of election in those Gram Panchayats is allowed to continue;

NOW, THEREFORE, in exercise of the powers conferred by Article 243K of the Constitution of India and Section 201 of the Andhra Pradesh Panchayat Raj Act, 1994, the State Election Commission, directs,

(a) that the declaration of unanimous election of the ten Sarpanchas specified in the Table and of all election proceedings in respect of the ten Gram Panchayats specified in the Table be and hereby suspended;

(b) the Collector not to allow the ten Sarpanchas of the Gram Panchayats specified in the Table who were declared to have been elected unanimously to assume office;

(c) the Collector, Chittoor to forward the records to the forensic experts (handwriting experts) authorised by the Government for examination and report on the genuineness of the signatures on the withdrawal forms in question and forward the report to State Election Commission;

(d) the Collector to relieve the four Returning Officers, Stage-I referred to in the Table from election duties forthwith and report compliance.

After the report of the forensic experts (handwriting experts) is received the State Election Commission will consider the issue and pass further orders.

Likewise, the impugned order in W.P.No.17404/2006 dated 3-8-2006 reads as

hereunder :

Sub: Third Ordinary Elections to Gram Panchayats, 2006 – Chittoor District, Sodem Somala, Piler and Narayanavaram Mandals – Allegations of forgery of signatures in withdrawal forms – Complaints given by contesting candidates – Records – verified – Regarding.

Ref: Legal representative.Roc.No.H2/7272/2006, dt. 31-7-2006 from the Collector and District Election Authority, Chittoor District.

WHEREAS in the reference cited, the District Collector, Chittoor has reported that complaints had been received from the following six contesting candidates for the office of Sarpanch/Ward Member alleging that their signatures were forged in the withdrawal forms :

| Sl No | Name of the Mandal | Name of the Gram Panchayat | Name of the contesting candidate and complainant | Name of the office for which the complainants are contesting |
|---|---|---|---|---|
| 1 | Sodam | 79-A, Chinthakulapalle | N.Reddamma | Sarpanch |
| 2 | Somala | Valligatla | G.Anandamma | Sarpanch |
| 3 | Piler | Piler | S.Beebijan | Sarpanch |
| 4 | Narayanavanam | Keelagaram | M.D.Eswari | Sarpanch |
| 5 | V.Kota | Honumakulapalle | P.Seshareddy | Ward Member of 10th Ward |
| 6 | V.Kota | Kongatam | T.Venkata-Rathnamma | Ward Member of 12th Ward |

AND WHEREAS the District Collector had further reported that the signatures of the contesting candidates are matching in the nomination form, declaration and sample signatures obtained. But their signatures do not prima facie match with the signatures in the withdrawal forms.

AND WHEREAS in a further enquiry conducted by the District Collector, the concerned Returning Officers, State-1 stated that, in respect of contesting candidates at Sl.No.1, 2 & 5 above, the withdrawal forms were delivered personally and that in respect of contesting candidates at Sl.No.3, 4 & 6 above, the withdrawal forms were delivered by the proposers who were not authorised for the purpose.

AND WHEREAS, in the face of overwhelming documentary evidence, prima facie the statements of the Returning Officers, State-1, do not seem to be reliable.

AND WHEREAS, the overwhelming documentary evidence available leads to a strong suspicion of foul play warranting the interference of the State Election Commission in the interests of maintaining purity of

elections;

AND WHEREAS, the conduct of the three Returning Officers, State-1, specified in the Table is prima facie suspicious, viewed in the face of documentary evidence and that in their hands the fairness of the election process in the six Gram Panchayat specified in the Table cannot be relied upon.

AND WHEREAS the State Election Commission is of the view that if the signatures of the candidates on the withdrawal forms are really forged, as alleged and as can be inferred prima facie from the report of the Collector, the election process can be said to have been vitiated and consequently rendered the declaration of the six candidates referred to in the Table as have been elected unanimously or through election in the case of Piler Gram Panchayat as Sarpanch or Ward Member as the case may be, void.

AND WHEREAS, the State Election Commission is of the opinion that in order to avoid such large scale fraud in the election process which strikes at the very root of purity of elections it is necessary to get the genuineness of signatures of the candidates in question in the withdrawal forms verified by the forensic experts (handwriting experts) authorised by the Government before the Sarpanchas and Ward Members declared to have been elected unanimously or through election in the case of Piler Gram Panchayat specified in the table are allowed to take charge.

NOW THEREFORE, in exercise of the Powers conferred by Article 243 of the Constitution of India and Section 201 of the Andhra Pradesh Panchayat Raj Act, 1994; the State Election Commission directs :

(a) that the declarations of unanimous election of Sarpanchas of 79-A Chintamakulapalle Gram Panchayat of Sodam Mandal, Valligatla Gram Panchayat of Somala Mandal, Keelagram Gram Panchayat of Narayanavanam Mandal and also the election of Sarpanch of Piler Gram Panchayat of Piler Mandal and the unanimous election of Ward Member of Ward 10 of Gonunakulapalle Gram Panchayat of V.Kota Mandal and Ward Member of Ward 12 of Kongatam Gram Panchayat of V.Kota Mandal are hereby suspended.

(b) the Collector not to allow the three Sarpanchas and two Ward Members of the said Gram Panchayats who were declared to have been elected unanimously to assume office;

(c) the Collector, Chittoor to forward the records to the forensic experts (handwriting experts) authorised by the Government for examination and report on the genuineness of the signatures on the withdrawal forms in question and forward the report to the State Election Commission;

(d) the Collector to relieve the six Returning Officers of the said Gram Panchayats from the election duties forthwith and report compliance.

After the report of the forensic experts (handwriting experts) is

received the State Election Commission will consider the issue and pass further orders.

**15.** It is needless to say that as can be seen from the impugned orders, the powers had been exercised as conferred by Article 243K of the Constitution of India and Section 201 of the Act. Article 243K of the Constitution of India reads as hereunder :

> **Elections of the Panchayats :**
> (1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor.
> (2) Subject to the provisions of any law made by the Legislature of a State, the conditions of service and tenure of office of the State Election Commissioner shall be such as the Governor may, by rule determine:
> Provided that the State Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of a High Court and the conditions of service of the State Election Commissioner shall not be varied to his disadvantage after his appointment.
> (3) The Governor of a State shall, when so requested by the State Election Commission, make available to the State Election Commission such staff as may be necessary for the discharge of the functions conferred on the State Election Commission by Cl. (1).
> (4) Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Panchayats.

Likewise, Section 201 of the Act reads as hereunder :

> **Powers and functions of the Andhra Pradesh Election Commissioner for Local Bodies :**
> (1) All elections to the Panchayat Raj Institutions shall be held under the supervision and control of the Andhra Pradesh Election Commission for Local Bodies and for this purpose it shall have power to give such directions as it may deem necessary to the Commissioner, District Collector or any officer or servant of the Government and the Panchayat Raj Institutions so as to ensure efficient conduct of the elections under this Act.
> (2) The preparation of electoral rolls for the conduct of all elections under the Act shall be done under the supervision and control of the Andhra Pradesh Election Commission for Local Bodies.

(3) For the purposes of this section the Government shall provide the Andhra Pradesh Election Commission for Local Bodies with such staff as may be necessary.

(4) On the request of the Andhra Pradesh Election Commission for Local Bodies, the State Government shall place at the disposal of the Commission such staff of the State Government, Gram Panchayats, Mandal Parishads and Zilla Parishads for the purpose of conduct of elections under this Act.

(5) The Andhra Pradesh Election Commissioner for Local Bodies may, subject to control and revision, delegate his powers to such officers as he may deem necessary.

Section 233 of the Act specifies as hereunder :

**Election Petitions :**

No election held under this Act shall be called in question except by an election petition presented to such authority and in accordance with such rules as may be made in this behalf.

Article 243(O) of the Constitution of India reads as hereunder:

**Bar to interference by Courts in electoral matters**

Notwithstanding anything in this Constitution,-

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Art.243K, shall not be called in question in any Court;

(b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.

**16.** The Rules relating to A.P. Panchayat Raj (Conduct of Elections of Members and Sarpanch of Gram Panchayats, Members of Mandal Parishads and Members of Zilla Parishads) Rules 2006 (G.O.Ms.No.142, Panchayat Raj & Rural Development (Elections) Department, dated 3-5-2006) at present govern the field. Rule 16 of the said Rules dealing with **Declaration of Result of Uncontested Election** reads as hereunder :

(1) If the number of contesting candidates is more than one, poll shall be taken.

(2) If there is only one validly nominated candidate, the Returning Officer shall forthwith declare such candidate is duly elected in Form-X and send the same to the State Election Commission, Election Authority and the District

Election Authority.

Rule 62 of the said Rules dealing with **Declaration of result of election and return of election** reads as hereunder :

(1) The Returning Officer shall subject to the provisions of rule 61 in so far as they apply to any particular case –

(a) declare in Form XXVII the candidate to whom the largest number of valid votes have been given to be elected for the seat and send signed copies thereof to the State Election Commission, Election Authority and District Election Authority.

(b) complete and certify the return of election in Form XXVIII and send copies thereof to the State Election Commission, Election Authority and District Election Authority.

(2) Any candidate or his agent shall, on application be permitted to take a copy of an extract of the return of election in Form XXVIII.

Rule 63 of the said Rules dealing with **Grant of Election Certificate** reads as hereunder :

> "As soon as may be after a candidate has been declared by the Returning Officer under rule 16 or, as the case may be, under rule 62 to have been elected, the Returning Officer shall grant such candidate a certificate of election in **Form XXIX** and obtain from the candidate an acknowledgement of its receipt duly signed by him immediately."

Rule 64 of the said Rules dealing with **Publication of Results** reads as hereunder :

> "The Returning Officer shall publish on the notice board in the Office of the Gram Panchayat/Mandal Parishad/Zilla Parishad concerned a notification signed by him, stating the names of the candidates duly elected."

**17.** Lengthy submissions were made by the Counsel representing the parties. Strong reliance was placed on a decision of the Apex Court (1) supra wherein the Apex Court held at para-91 as hereunder :

> "Diffusion, even more elaborate discussion, tends to blur the precision of the conclusion in a judgment and so it is to meet that we synopsize the formulations. Of course, the condensed stated that we make is for convenience, not for exclusion of the relevance or attenuation of the binding impact of the detailed argumentation. For this limited purpose, we set down our holdings :
>
> 1(a) Article 329(b) is a blanket ban on litigative challenges to electoral

steps taken by the Election Commission and its officers for carrying forward the process of election to its culmination in the formal declaration of the result.

(b) Election, in this context, has a very wide connotation commencing from the Presidential notification calling upon the electorate to elect and culminating in the final declaration of the returned candidate.

2(a) The Constitution contemplates a free and fair election and vests comprehensive responsibilities of superintendence, direction and control of the conduct of elections in the Election Commission. This responsibility may cover powers, duties and functions of many sorts, administrative or other, depending on the circumstances.

(b) Two limitations at least are laid on its plenary character in the exercise thereof. Firstly, when Parliament or any State Legislature has made valid law relating to or in connection with elections, the Commission, shall act in conformity with, not in violation of, such provisions but where such law is silent Art. 324 is a reservoir of power to act for the avowed purpose of, not divorced from, pushing forward a free and fair election with expedition. Secondly, the Commission shall be responsible to the rule of law, act bona fide and be amenable to the norms of natural justice in so far as conformance to such canons can reasonably and realistically be required of it as fairplay-in-action in a most unimportant area of the Constitutional order viz., elections. Fairness does import an obligation to see that no wrong-doer candidate benefits by his own wrong. To put the matter beyond doubt, natural justice enlivens and applies to the specific case of order for total re-poll, although not in full panoply but in flexible practicability. Whether it has been complied with is left open for the Tribunal's adjudication."

Further reliance was placed on **S.Fakruddin Vs. Government of Andhra Pradesh** [6]**.** Further reliance was placed on the decision referred (2) supra. Strong reliance was placed on the aspect of plenary powers of the State Election Commission in the decision referred (4) supra wherein the Apex Court at para-25 observed as hereunder :

"To sum up, therefore, the legal and constitutional position is as follows:

(a) when there is no Parliamentary legislation or rule made under the said legislation, the Commission is free to pass any orders in respect of the conduct of elections,

(b) where there is an Act and express Rules made thereunder, it is not open to the Commission to override the Act or the Rules and pass orders in direct disobedience to the mandate contained in the Act or the Rules. In other words, the powers of the Commission are meant to supplement

rather than supplant the law (both statute and Rules) in the matter of superintendence, direction and control as provided by Article 324.

(c) where the Act or the Rules are silent the Commission has no doubt plenary powers under Article 324 to give any direction in respect of the conduct of elections, and

(d) where a particular direction by the Commission is submitted to the Government for approval, as required by the Rules, it is not open to the Commission to go ahead with implementation of it as its own and with implementation of it at its own sweet will even if the approval of the Government is not given.

In the decision referred (5) supra, the Apex Court held at para-8 as hereunder :

"While we reiterate the judicial perception as to the constitutional position and the plenitude of the powers of the Election Commission as a high and exclusive body charged with the duty, at once sensitive and difficult, of overseeing the free and fair elections in the country and that its perceptions of the imperatives for a free and fair elections are not to be interfered with by the courts, we must also indicate that there are no unreviewable discretions under the constitutional dispensation. The overall constitutional function to ensure that constitutional authorities function within the sphere of their respective constitutional authority is that of the courts. Whether the blanket suspension of the electoral process purported in the order dated 2-8-1993 is justiciable on that principle of judicial review is eminently arguable. But one thing seems clear : the jurisdiction of the courts would not extend to issuing directions to the Election Commission for the conduct of particular polls on particular dates independently of the perception by the Commission as to their feasibility and practicability consistent with what may be needed to ensure the purity of electoral process. On this aspect we have reservations about the permissibility of the various interlocutory orders of the High Courts which may have the effect and implications of compelling the Election Commission to conduct polls on particular dates and also to follow those events up to their sequential and logical ends. But in the light of the submissions made by Shri G.Ramaswamy, it becomes unnecessary to consider these aspects any further at this stage."

In the decision referred (3) supra, this Court at para-7 held as hereunder :

"This Court in *Chinna Narsappa v Venkat Reddy and others* (1996(2) ALT 593 (DB) held that the scheme of the provisions of the Constitution as well as the A.P. Panchayat Raj Act and the Rules made thereunder as can be seen from Section 233 of the Act and the Rules is that any election

to Gram Panchayat can be called in question by an Election Petition presented to such authority and in accordance with the reasons given thereunder. Rule 12(d)(iii) and (iv) of the Election Tribunal Rules is wide enough to take cognizance of the complaint of the petitioner, namely, the declaration of result is contrary to Rule 35, and having regard to the scheme of the Constitution, the Act and the Rules and the fact that there is an effective alternative remedy of filing Election Petition available to the petitioner, the Writ Petitioins are not maintainable. In view of the same, this Court is of the considered opinion that the present Writ Petition is devoid of merit."

**18.** Certain submissions were made that though the election as such was over, being unanimous, it cannot be said that the election process is over unless the Certificate is given and at that stage since report was received in relation to the large scale forgery, the State Election Commission is empowered to interfere. Yet another contention is that to ascertain the truth or otherwise since this investigation is going on and unless a decision is taken in this regard, it cannot be said that the writ petitioners are having any right to approach this Court and in a way these Writ Petitions are premature.

**19.** On a careful analysis of the relevant Constitutional provisions and also the scheme of the Act and the Rules framed thereunder, this Court is of the considered opinion that though the State Election Commission can exercise the plenary powers, definitely questions of this nature which may have to be adjudicated being serious factual controversies, especially after the declaration of results, cannot be usurped and enquired into by the State Election Commission. Different provisions of the Constitution and the scheme of the Constitution and the different provisions of the Act and the scheme of the Act and also the different provisions of the Rules may have to be harmoniously construed and the State Election Commission cannot be permitted to be an adjudicatory body at a belated stage to go into these factual controversies which may have to be adjudged by the aggrieved parties by way of Election Petitions. This appears to be the predominant view expressed by different Courts. In such a case, after declaration

of results, on the ground that there was some large scale forgery and some complaints have been received by the District Collector and on such report the action had been initiated by the State Election Commission, in the opinion of this Court, the same cannot be sustained. This Court also is satisfied that the election process as such by virtue of the declaration of results had been completed and issuance of the certificate being only a ministerial act which is just a consequential follow up action, merely because the same was not completed, the State Election Commission cannot be permitted to contend before this Court that the process of election is incomplete and hence at this stage the State Election Commission definitely cannot seek some expert opinion for the purpose of adjudicating such factual controversies. This role sought to be played by the State Election Commission at this stage, in the opinion of this Court, is definitely without jurisdiction and the same would not fall within the concept of plenary powers which are being advanced before this Court. Even otherwise, this Court is satisfied that the material on which the said decision had been taken appears to be not sufficient. Viewed from any angle, the remedy of such parties who had complained about these factual controversies, would be elsewhere. It is needless to say that when the candidates had been democratically elected unopposed, they should not be prevented from assuming their respective offices unless and otherwise such election is set aside by a competent Election Tribunal.

**20.** In the light of the reasons recorded above, the writ petitioners are bound to succeed and accordingly the Writ Petitions are hereby allowed. No order as to costs.

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Justice P.S. Narayana

Date : 2-11-2006

L.R. copy to be marked : YES / NO
AM

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[1] **AIR 1978 S.C. 851**
[2] **2004(2) SCC 759**
[3] **2006(5) ALT 229**
[4] **AIR 1984 S.C. 921**
[5] **1995(3) Supplement SCC 643**
[6] **1995(2) ALT 439 (Spl.FB)**